IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15998 of 2004

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

JASWANTSINHJI AMARSINHJI THAKOR - Petitioner(s)

Versus

HARSHBALABEN WD/O DECEASED RAMBHAI LALLUBHAI PATEL &5 - Respondent(s)

==========

Appearance :

MR HM PARIKHfor Petitioner No(s).: 1.

None for Respondent No(s).: 1.
RULE SERVED for Respondent No(s).: 1 - 1.
MS SNEHA A JOSHI for Respondent No(s).: 1 - 1,1 - 1.

==========

CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 29/06/2005

ORAL JUDGMENT

1. By filing instant petition under Article 227 of the Constitution of India, petitioner seeks to challenge the order dated 30.9.2004 recorded below application exh.89 in Regular Civil Suit No. 208 of 1998 by the learned 3rd Joint Civil (JD), Anand, by which the application filed by the petitioner, to raise three additional issues, proposed in the application, came to be rejected.
2. According to the petitioner he had purchased land of Block No.82 of village Mogar, Taluka &District, Anand, from the original owners who had permanent tenancy rights over the said land, vide registered document dated 12.12.1964. The deceased Rambhai Lallubhai Patel, who was plaintiff in the trial Courr, instituted Civil suit No. 208 of 1998 against the present petitioner, in the Court of Civil Judge (JD), Anand, for declaration and permanent injunction contenting inter alia in the suit that the land bearing Block No. 82, admeasuring 9 acres and 28 gunthas of village Mogar was purchased by him on 27.10.1967 from its original owners Chaturbhai Dabaibhai Parmar and others and the remaining land admeasuring 2 acres of the said Block Number was purchased on 13.10.1992 from its original owners Prabhatbhai Kabaibhai and Parmar. It was further contended that the said lands were purchased by the original owners under the Tenancy proceedings and since the date of purchase the lands were in possession of deceased Rambhai Lallubhai. It was further contended that that in the revenue record, by mutation entry no. 7112, name of the present petitioner has been entered in collusion with Talati-cum-Mantri. Therefore, according to the original plaintiff, petitioners are trying to enter the lands illegally and hence the suit for declaration and injunction was filed. In the aid suit the original plaintiff has also filed application exh.5 for interim injunction.
3. The suit was contested by the petitioner by filing Written Statement against the Plaint as well as Written Objection against the application exh.5, wherein all the averments made in the Plaint as well as application seeking interim injunction came to be denied. It was contended in the written statement that Prabhatbhai Kabaibhai and others were the permanent tenants and the Tenancy rights were sold by them to the present petitioner on 12.12.1964 and thereafter, Prabhatbhai Kabaibhai and others had no right to sell the suit property and the said tenancy proceedings were null and void. It was further contended that the as the permanent tenant has sold his

tenancy rights in favour of the present petitioner by document dated 12.12.1964, the petitioner steps in the shoes of original tenant and the petitioner has become deemed purchaser under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. It was also contended that the original plaintiff was permanently residing at Vadodara and looking to the panchnama which has been prepared by the plaintiff, it is clear that the plaintiff was never in possession of the suit land.

4. The learned trial Judge has framed issues at exh.40 and at issue no.6, the learned trial Judge framed issues to the effect that whether defendant proved that Prabhatbhai Kabaibhai and others had sold the tenancy rights vide document dated 12.12.1964 and they have no right over the land. The said issue does not cover the contentions of the petitioner to the effect that whether Prabhatbhai Kabaibhai and others were permanent tenants or not as only a permanent tenant can transfer his tenancy rights and on transfer the purchaser would become the deemed purchaser of the land. According to the petitioner he has taken a contention that as the petitioner has become the deemed purchaser under the provisions of the Tenancy Act, it was necessary for the learned trial Judge to frame issues to the effect that whether the original owners Chaturbhai Kabaibhai and others were permanent tenants; whether Chaturbhai Kabaibhai and others have sold their tenancy rights on 12.12.1964 and whether the present petitioner has become the deemed purchaser or not. For that purpose, the petitioner filed application exh. 89 in the said suit, claiming the relief of raising three additional issues. The learned trial Judge vide order dated 30.9.2004 dismissed the application exh. 89, which has given rise to the present petition at the instance of the original defendant.
5. Mr. H.M.Parikh, learned advocate of the petitioner contended that the issues are required to be framed from the pleadings and the documents produced by the parties. Therefore, according to him, the learned trial Judge ought to have accepted the application filed by the petitioner seeking to raise additional issues. Therefore, the proposed issues are required to be framed. By not accepting the prayer made in the application, the learned trial Judge has committed error, therefore, said order is required to be quashed and set aside by allowing application exh.89 and by raising additional issues, proposed in the application. He, therefore, urged that this petition deserves to be allowed.
6. Ms. Sneha Joshi, learned advocate of the respondents supported the order passed by the learned trial Judge and according to her the

issues cover the proposed issues suggested by the petitioner in his application exh.89, therefore no interference is required to be called for in the impugned order. She, therefore, urged to dismiss the petition.

7. Having heard Mr. H.M.Parikh, learned advocate of the petitioner and Ms. Sneha Joshi, learned advocate of the respondent and on perusal of the impugned order and the copies of the pleadings of the lower Court, i.e. Plaint as well as Written Statement, it is seen that the petitioner-defendant has taken the contention with regard to the right of the tenancy created in his favour by a registered sale deed dated 12.12.1964 by Prabhatbhai Kabaibhai. There is no manner of doubt that the issues are to be framed on the basis of the averments made in the pleadings of the parties and, when the petitioner-defendant has raised the contention with regard to the tenancy, the Court is duty bound to frame the additional issues accordingly.
8. In the instant case, the learned trial Judge has misdirected herself in observing that issue no.6 framed by her vide exh.14 covers the additional issues proposed by the petitioner, which according to this Court, is absolutely an erroneous finding. Therefore, according to this Court, additional issues proposed in application exh.89 are necessary to adjudicate the question raised in the Suit.
9. Seen in the above context, the impugned order does not stand to scrutiny, which is deserved to be quashed and set aside by allowing this petition and by granting application exh.89.
10. For the foregoing reasons, the petition succeeds and accordingly it is allowed, with no order as to costs. The impugned order dated 30.9.2004 rejecting the application exh.89 in Regular Civil Suit No. 208 of 1998 is hereby quashed and set aside, the result of which is that the application exh.89 is allowed. The learned Civil Judge (JD), Anand is hereby directed to raise three additional issues proposed in application exh.89 and thereafter to proceed in accordance with law.
11. Rule is made absolute to the aforesaid extent.

(A.M.Kapadia,J)

Jayanti*